

AFL-CIO Laundry & Dry Cleaning International Union, Local No. 52 and Standard Industrial Towel and Uniform Supply, Division of Dickies Industrial Services, Inc.

Standard Industrial Towel and Uniform Supply, Division of Dickies Industrial Services, Inc. and AFL-CIO Laundry & Dry Cleaning International Union, Local No. 52, Petitioner. Cases 21-CB-8324 and 21-RC-17107

28 February 1984

**DECISION, ORDER, AND
CERTIFICATION OF
REPRESENTATIVE**

**BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS**

On 25 July 1983 Administrative Law Judge David G. Heilbrun issued the attached decision. The Charging Party-Employer filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

¹ The Charging Party-Employer has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We find no merit in the contention of the Charging Party-Employer that, because the judge generally credited the Respondent-Petitioner's witness and discredited the General Counsel's witnesses, his credibility resolutions are erroneous or attended by bias or prejudice. *NLRB v. Pittsburgh Steamship Co.*, 337 U.S. 656 (1949).

The General Counsel asserted that, in the course of an organizing campaign, Jose Robles, the Respondent-Petitioner's business agent, told employees Margaret Huguez and Theresa Carrillo that the Union would refuse to assist those who failed to sign authorization cards or vote affirmatively in the forthcoming election, should the Union win. By such utterances, the General Counsel contended that the Union both violated Sec. 8(b)(1)(A) of the Act and engaged in objectionable conduct requiring that the election be set aside.

The Respondent-Petitioner denied that such utterances were made. Concededly, this case turns on the credibility of witnesses.

Based on the favorable impression created by the demeanor of the Respondent-Petitioner's witness, Robles, and on what was deemed to be his superior recollection, the judge credited his testimony over that given by the General Counsel's witnesses, whose versions of the facts were sometimes inherently inconsistent and in conflict with prior affidavits, with each other's, and with that given by Robles. Indeed, our examination of the record also reveals one instance in which Filimon Razo, a witness for the General Counsel, tended to corroborate Robles, who credibly testified that he had merely stated, in response to Carrillo's expressed fear of being fired for supporting the Union: "Well, I'm here, you know, just to do the opposite, I'm here to protect you. But I won't be able to protect you if the Union won't get in [emphasis supplied]." In these circumstances, we find no evidence of bias and prejudice because the judge credited Robles over the General Counsel's three witnesses.

The Charging Party-Employer also contends that the judge revealed bias and prejudice against the General Counsel's witnesses by speculating that their discredited version of events may have been prompted by the

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

The Regional Director's report is affirmed, and Objection No. 2 is overruled.

**CERTIFICATION OF
REPRESENTATIVE**

IT IS CERTIFIED that a majority of the valid ballots have been cast for AFL-CIO Laundry & Dry Cleaning International Union, Local No. 52, and that it is the exclusive collective-bargaining representative of the employees in the unit found appropriate.

Charging Party-Employer's "opportunistic" use of language in its post-election objections which closely track the complaint allegations. We disavow this speculation. It is immaterial to the issues raised by the complaint. The judge himself apparently recognized this, for none of his findings or conclusions is predicated upon it. Accordingly, we are satisfied that the Charging Party-Employer's allegations of bias and prejudice are without merit.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge: This consolidated case was heard at Los Angeles, California, on May 24, 1983, based on a complaint alleging that AFL-CIO Laundry & Dry Cleaning International Union, Local No. 52, called the Respondent, violated Section 8(b)(1)(A) of the Act by a representative's stating he would not render assistance to an employee who failed to support his organizational campaign and, after inquiring how an employee would vote in a Board-conducted election, telling the employee that the secret-ballot choice made by the employee would determine the Respondent's future treatment of her. The issue consolidated with the complaint in this proceeding is based on a Regional Director's Report on Objections in which a certain Objection 2, as timely filed and served following a Board-conducted election by Standard Industrial Towel and Uniform Supply, Division of Dickies Industrial Services, Inc., called the Employer, was a matter that could best be determined after a hearing.

On the entire record, my observation of the witnesses, and consideration of oral summations and the Employer's posthearing brief, I make the following

**FINDINGS OF FACT AND RESULTANT CONCLUSIONS
OF LAW**

I. SETTING

In approximately early October 1982 Jose Robles, a business agent and organizer for the Respondent, commenced union activity among the nearly two dozen em-

ployees of the Employer.¹ Over the month period that followed his primary technique was to visit the employees at their homes, explain the benefits of unionization, and solicit authorization cards. He followed this approach with about 17 employees out of the total work force, believing from informational sources available to him that it would be futile to contact the several additional ones because of their known view on the subject. His efforts resulted in obtaining approximately a dozen signed authorization cards, and on this basis he filed a representation petition on November 8, 1982, which was docketed as Case 21-RC-17107.² On November 24 the Regional Director approved a Stipulation for Certification Upon Consent Election as entered into between the parties, and on this basis a secret-ballot election was conducted on December 16. As among approximately 22 eligible voters the results were clearly 12 votes for the Union as the Petitioner and 10 votes against. On December 21 the Employer validly filed five objections, two of which were later withdrawn and two others of which were recommended by the Regional Director to be overruled because no evidence had been offered in support thereof. The remaining Objection 2, as here consolidated for hearing, states:

The Union and those acting in its behalf rendered impossible a free choice in the election by threatening employees who opposed the Union or who refused to support the Union or who refused to divulge to the Union how they intended to vote in the election, that they would be denied their right to fair representation by the Union in the event the Union prevailed in the election.

II. THE GENERAL COUNSEL'S EVIDENCE

Margaret Huguez has been with the Employer over 4 years and presently works in shipping. She testified that in early November Robles had come to her home soon after she arrived following the 2:30 p.m. quitting time. He introduced himself, displayed pamphlets, and stated he was trying to get signatures for the Union. Robles also tendered an authorization card, with Huguez stating she wanted to discuss the matter with her husband before doing anything. She recalled only once again ever speaking with Robles and fixed this as around a week before the representation election took place. This was a telephone conversation in which Robles referred back to his original visit and asked how she was planning to vote. Huguez answered that it was not any of his business because of the secret character of balloting, and she testified that in response to this he said he just wanted to learn the answer so he would know how to treat her

when the Union came in the plant. Huguez rejoined that this sounded like a threat, following which Robles answered that it really did not matter as he had enough signatures for the Union at that point. Further remarks were hindered by telephone static causing Robles to suggest that he would call Huguez back to get a better line. The two then hung up, but Huguez disconnected her equipment thus preventing Robles from getting through again.

Theresa Carrillo has worked for 2 years with the Employer, and testified to having three conversations with Robles during late 1982. In the first of these Robles came to her house, introduced himself as he had with Huguez, and tendered a card that he asked her to sign as a step toward better benefits. Carrillo recalled that her husband, Filimon Razo, joined this conversation and spoke disfavorably about the Union. In further discussion of the subject, Robles said that Carrillo was not obligated to sign. However, she testified that he followed this by saying that if the Union got into the Company he was not going to help her if she were not with them. A second conversation about 2 weeks later only involved Robles' return to the home inquiring about her intentions as to signing the card. His remark on leaving that time was that she should think the point over well. Carrillo recalled the third conversation as taking place in late November at her home with Razo also present. On this occasion Robles explained that he returned after hearing from another employee that Carrillo was ready to sign the card. She denied having told anyone that, and Robles responded saying that her signature was actually not necessary because there were already enough. Carrillo testified that he followed this by saying that if she did not want to sign then not to do so, but if the Union came into the Company and the Company fired her he could not help (or "protect") her at all because she was not with them as he would very well know.

Razo recalled being present twice when his wife conversed with Robles. He testified that on the first occasion at the house Robles had solicited her signature for the Union, saying that, if it "wouldn't" come in and employees were later laid off, then "they couldn't do anything for them." Razo placed the second conversation about 2 weeks later and also at the house, at which time Robles had come to learn Carrillo's decision about signing the Union's card. She was not willing to do so at the time, and after inviting Carrillo to call him on the subject Robles said that if the Union "would come in" and persons were then laid off "they couldn't help them," so that if he did come in (at the Company) "it was going to cost her more."³

III. THE RESPONDENT'S EVIDENCE

Robles testified that he had been with the Union since May and this organizational campaign was the third in which he was involved. He recalled the initial home visit to Huguez as much as she had, including a separate conversation with her husband on the subject on unionization. After unsuccessfully attempting to see her personal-

¹ The Employer engages in the business of providing work clothes rental services in connection with which it operates a facility located in El Monte, California, annually deriving gross revenues in excess of \$500,000 there while annually purchasing and receiving goods and products valued in excess of \$50,000 directly from suppliers located outside California. On these admitted facts I find the Employer is engaged in commerce and a business affecting commerce within the meaning of Sec. 2(6) and (7) of the Act, and otherwise that the Union is a labor organization within the meaning of Sec. 2(5).

² All dates and named months hereafter are in 1982 unless shown otherwise.

³ Certain errors in the transcript are hereby noted and corrected.

ly again at home, he telephoned her at a time when he believed she was home because she was on vacation. He reached Huguez on a second attempt that morning, talked initially about the card he had left, and then asked how she was going to vote. This aggravated Huguez into telling him that it was not his business and, as he tried to calm her rising anger, the telephone connection became so noisy that he suggested they hang up and he would try calling in again on a better line. After making this break in the contact, Robles could not get an answer on his callbacks and consequently never spoke to her again. Robles denied that during the actual telephone conversation he had ever said anything about the result of how she would vote or the Union's reaction to her intentions.

Robles recalled three discussions with Carrillo during the campaign, the first of which was introductory and with only her mother as another adult present. He denied asking Carrillo on this occasion how she might vote or telling her how the Union would treat her if she were not its supporter. He believed the second conversation took place at her home a few days later and was only in a routine followup of the first visit. Robles recalled the third conversation as being around late November, and that he had appeared again at the house because another employee told him Carrillo was now ready to sign for the Union after noticing so many other people were interested. He found that in fact she was still undecided, and for the first time her husband Razo joined the conversation and gave an example of his friend's having had an unfortunate experience with a union. Robles testified that he explained Carrillo would not experience problems, and that her signature would actually be favorably protective as evidence of having sought legal improvement in job rights. Robles testified that Razo continued to speak against signing and uttered that Carrillo would get the same benefits regardless of whether the Union came in or stayed out. Robles recalled further that he said he was really there to protect her in job matters, but would not be able to do so if the Union did not get in. He expressly denied telling Carrillo that he would not be able to protect her should the Union get in and she had not signed a card. Robles testified that the conversation ended with Carrillo's saying rather unconvincingly that she would call him later, but the two never spoke again particularly because of her appearance of just not actually being interested in joining the cause.

IV. CREDIBILITY

On critical factual issues of the case, I discredit the General Counsel's witnesses and fully credit the testimony of Robles. I am dubious of Huguez because of demeanor characteristics and because she displayed an indication of bias toward Robles and the Union. More importantly the highly persuasive testimony of Robles makes her version of remarks inherently improbable, and it is significant that she immediately told her supervisor (Kenny) about what she took as a threat emanating from Robles. She subsequently repeated her experience to a higher official, and I am convinced that she completely misunderstood permissible inquiry about her voting intentions and has succumbed to suggestiveness surfacing

in the postelection process. I therefore reject her testimony that Robles had expressed or inferred that she would receive treatment by the Union any different from any other employee regardless of her preelection stance.

Carrillo is highly unconvincing in terms of demeanor, and has been shown as inconsistent in details of her testimony. There is discrepancy in essentially what time of day the first conversation with Robles took place and who was present during the third. She is at odds with Razo concerning how Robles had commented on employees' voting privileges, and as with Huguez I believe she seriously distorted what he explained about unionization rights and confused his scenario about employees being without union protection by thinking that he meant the Union itself would not fairly serve them. Carrillo was admittedly distraught for personal reasons during the critical time of events in this case, and she also conceded having a poor memory of happenings. Finally, she, too, was suspect because of having told her supervisor, Beatriz Mendez, of Robles' supposed remarks only after the election was over. The testimony of Razo was particularly unpersuasive, and his unaided memory did little to support allegations of the complaint. I believe he is simply parroting notions that are erroneous in the first instance.

The most vital aspect of overall credibility resolution is that Robles manifested as a highly truthful, candid witness who possessed an excellent recollection of detailed facts concerning his employee contacts. He persuasively described working as a relatively new organizer under an experienced superior, and to having a working knowledge of labor law principles. His version of appropriately soliciting authorization cards and verbally propagandizing about how the Union would be a force in protecting employee job security is natural, normal, and here fully convincing. For this reason I credit Robles over all testimony on behalf of the General Counsel (and relatedly the Employer) and accept his recollection as facts of the case.

V. RESOLUTION OF ISSUES

As to the complaint in this consolidated proceeding my credibility findings leave its key allegations unsupported by any probative evidence. While Huguez took telephone remarks to her as a threat, in truth Robles had not, as alleged, stated there would be any failure of ordinary assistance to her for not rallying to the Union's organizational campaign should it later become a certified bargaining representative for a unit of which she was a part. Similarly, Robles did not commit any comparable threat, as was further alleged, in his series of contacts with Carrillo. Here, too, an explanation of how the Union might aid employees should they come to experience employment adversity has been twisted by the hearer into a rendition that did not actually occur. It is typical for an organizer of unrepresented employees to emphasize the protection that a union might afford both from the standpoint of its collective strength and as conversant with legal rights of employees and the procedural means of attainment. Robles expressed just such notions in his remarks to both Carrillo and Razo, and the

Union's success in this situation must not be undercut simply because several individuals failed to understand what he was saying. While concededly Robles did at one point directly inquire of Huguez as to how she would vote, this tactical approach, without more, does not violate the Act. Aside from its lack of inherent coerciveness, Robles reasonably explained that the question was purely for the purpose of assessing how election prospects were shaping up and whether Board processes continued to be appropriate to the Union's legitimate objectives.

The Employer's Objection 2 depends on pertinent findings in the CB case with which it is consolidated. The accepted facts leave no support for its essential assertions that threats of denial to future fair representation could eventuate against unsupportive employees. Considering the extensive involvement of supervision in developing a basis for this objection, it is a close question as to whether the Employer's postelection claim is little more than an opportunistic effort to snatch a fairly won election victory from this labor organization. In any event a failure of appropriate proof is again the case, and the

issues raised by Objection 2 must be resolved in favor of the Union.

Disposition

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER⁴

The complaint is dismissed in its entirety.

IT IS FURTHER ORDERED that the Regional Director's Report on Objections be confirmed, additionally that Objection 2 be overruled, and that the Regional Director shall now therefore certify the Union as exclusive collective-bargaining representative for the production and maintenance unit agreedly found appropriate herein.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.